

**179** \*By the agreement of the 26th of May, 1828, it is expressly declared, that nothing therein contained should, in any manner, affect the mortgage given by Thomas Clagett, and his family, to indemnify Salmon against certain risks and losses. If this general reservation had been made in an agreement between Salmon and the other creditors of Thomas Clagett alone, there might have been some difficulty in treating it as such a reservation as would preserve to the sureties the benefit of the implied contract in all respects; because, it is not enough, that the creditor alone should make such a stipulation; the principal debtor must also consent, that his liability to the surety should remain entire and undiminished. But here Thomas Clagett by signing this agreement, has thereby distinctly assented to this express reservation of the remedies upon the mortgage itself, as well as upon its incident implied contract; for the stipulation, that nothing therein contained should affect the mortgage, must, according to every fair interpretation of the expression, be considered as a complete reservation of the remedies to the whole extent. And so considered, it is clear, that these sureties cannot found any claim to be discharged from the mortgage upon any thing contained in the agreement of the 26th of May, 1828.

The defendants moreover object, that supposing they are wrong as to the time when the mortgage might have been foreclosed, then the plaintiff cannot have, under this bill, relief of any kind; because he has instituted his suit before his debt became due; and that if this injunction were to be made perpetual, they would be tied up indefinitely and thrown at the mercy of the plaintiff without the possibility of relieving themselves in any way whatever.

Where a debt, secured by a mortgage, is made payable by instalments, it is well settled, that the mortgage becomes forfeited by the non-payment of the first instalment, and may be foreclosed immediately after that time. If a bill be filed for that purpose, the debtor may, however, prevent a foreclosure, or sale, by paying the instalment then due; but if he fails to do so, then the mortgage may be entirely foreclosed; or so much of the property may be sold as will satisfy the sum due at that time; and the decree will be allowed to stand as a security for the other instalments as they become due; as in case of a judgment at law for an annuity. But if the mortgaged property cannot be conveniently or safely sold in parcels, then it must be disposed of entire, and the whole debt raised and paid, with a rebate of interest on the sums not due

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his surety may, after the time of payment has elapsed, or been extended by the Legislature, call for new security, and if it be not given, may proceed by execution.—*November, 1787, ch. 40, not in Kilty, but still in force.*